

**DEC 16 2005**

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U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

EARNEST A. DARDEN,

Plaintiff - Appellant,

v.

BERKELEY COMMUNITY MEDIA; et  
al.,

Defendants - Appellees,

No. 05-15328

D.C. No. CV-03-03264-MMC

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Maxine M. Chesney, District Judge, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER and FISHER, Circuit Judges.

Earnest A. Darden appeals pro se from the district court's summary judgment in favor of defendants in his action alleging violations of the Cable Communications Policy Act ("the Act"), and various constitutional violations. We

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> Because the panel unanimously finds this case suitable for decision without oral argument, appellant's request is denied. *See* Fed. R. App. P. 34(a)(2).

have jurisdiction pursuant to 28 U.S.C. § 1291. We review de novo, *Delta Sav. Bank v. United States*, 265 F.3d 1017, 1021 (9th Cir. 2001), and we affirm.

The district court properly granted summary judgment on Darden's claims that Berkeley Community Media ("BCM") violated the Act because Darden failed to present evidence that BCM is a cable operator within the meaning of the Act. *See* 47 U.S.C. § 522.

The district court properly granted summary judgment to defendants on Darden's constitutional claims because he failed to present evidence that BCM is a state actor, *Morse v. North Coast Opportunities, Inc.*, 118 F.3d 1338, 1340 (9th Cir. 1997), or that the alleged constitutional violation was the product of an official City of Berkeley policy or procedure, *Hopper v. City of Pasco*, 241 F.3d 1067, 1082 (9th Cir. 2001).

To the extent Darden claimed that defendants conspired to violate his constitutional rights, his claim fails because he provided no evidence to support his conclusory allegation. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001) (this Court need not "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences.").

**AFFIRMED.**